



## STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL

July 20, 2004

Marlene Dortch

Secretary

Federal Communications Commission

445 12<sup>th</sup> Street, S.W.

Washington, D.C. 20554

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JUL 26 2004

FCC - MAILROOM

Re: Ex Parte Filing – WC Docket No. 04-30 - SBC Emergency Request for Declaratory Ruling and Preemption

Dear Ms. Dortch:

By this letter, the Connecticut Department of Public Utility Control (CTDPUC or Department) herein provides an update to the Federal Communications Commission's (Commission) record in the above captioned docket of the status of the Department's investigation in its Gemini Proceeding.<sup>1</sup> As the Commission is aware, the CTDPUC has directed the Southern New England Telephone Company d/b/a SBC Connecticut (Telco), pursuant to Connecticut state law,<sup>2</sup> to unbundle its abandoned hybrid fiber coaxial (HFC) network. The CTDPUC's December 17, 2003 Decision in the Gemini Proceeding was remanded to the Department and Docket No. 03-01-02 was reopened.<sup>3</sup>

Since reopening the Gemini Proceeding, the administrative record addressing the technical feasibility of unbundling the Telco's HFC network has been developed and the CTDPUC expects to render its Final Decision in this matter on August 25, 2004. Given that the reopened Gemini Proceeding is nearing its conclusion, the CTDPUC requests that the Commission defer issuing a ruling in WC Docket No. 04-30 pending the issuance of the Department's Final Decision on August 25, 2004. The CTDPUC makes this request because the Final Decision may make the Telco's Emergency Request for a Declaratory Ruling and Order (Emergency Request), the subject of WC Docket No. 04-30, moot.

<sup>1</sup> See CTDPUC Docket No. 03-01-02 Petition of Gemini Networks CT, Inc. for a Declaratory Ruling Regarding the Southern New England Telephone Company's Unbundled Network Elements (Gemini Proceeding).

<sup>2</sup> The General Statutes of Connecticut (Conn. Gen. Stat.) §16-247b(a) provides in part, that: (O)n petition or its own motion, the Department shall initiate a proceeding to unbundle the noncompetitive and emerging competitive functions of a telecommunications company's local telecommunications network that are used to provide telecommunications services and which the Department determines, after notice and hearing, are in the public interest, are consistent with federal law and are technically feasible of being tariffed and offered separately or in combinations.

<sup>3</sup> This proceeding was reopened because the December 17, 2003 Decision was appealed to the Superior Court of Connecticut Judicial District of New Britain, Connecticut. On April 1, 2004, the Court issued its Memorandum of Decision in this matter. In that ruling, while finding that the Department correctly determined that the HFC facilities constitute UNEs, the Court also found that the Department did not make a finding or determination that the unbundling of those facilities was "technically feasible." The Court affirmed the Telco's appeal and directed the Department to reopen Docket No 03-01-02 proceeding to make the necessary determination/finding relative to the technical feasibility of unbundling those network elements.

Although the Gemini Proceeding has been reopened to address the technical feasibility of unbundling the Telco HFC network, the CTDPUc continues to believe that its December 17, 2003 Decision is consistent with federal and state law. More important however, is the fact that this Decision recognized Gemini's commitment to invest in its Connecticut network as well as the Telco's abandonment of HFC facilities, while stimulating facilities-based competition in the state. Gemini has also committed to offer a full panoply of services over that network, including the qualifying services outlined by the Commission in previous rulings.

CTDPUC hereby requests that the Commission defer its ruling pending the Department's issuance of its Final Decision. The CTDPUc makes this request so that it has the opportunity to complete its investigation pursuant to the authority granted the Department under state law. Additionally, depending upon the Department's findings in the reopened proceeding, the need for the Commission to rule on the Telco's Emergency Request may become moot.

Sincerely,

DEPARTMENT OF PUBLIC UTILITY CONTROL

*Louise E. Rickard*

BML

Louise E. Rickard  
Acting Executive Secretary